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11 CYNTHIA MCMAHON

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CYNTHIA MCMAHON, on behalf of  
15 herself, all others similarly situated,

16 *Plaintiff,*

17 vs.

18 TUESDAY MORNING, INC., a Texas  
19 corporation; and DOES 1 to 100,  
20 Inclusive

21 *Defendants.*

Case No.:

**CLASS ACTION**

**COMPLAINT FOR:**

1. Violation of 15 U.S.C. §§  
1681b(b)(2)(A) (Fair Credit  
Reporting Act);
2. Violation of 15 U.S.C. §§  
1681d(a)(1) and 1681g(c) (Fair  
Credit Reporting Act);
3. Violation of California Civil Code  
§ 1786 *et seq.* (Investigative  
Consumer Reporting Agencies  
Act)
4. Violation of California Civil Code  
§ 1785 *et seq.* (Consumer Credit  
Reporting Agencies Act)

**JURY TRIAL DEMANDED**

1 Plaintiff, CYNTHIA MCMAHON (hereafter "Plaintiff"), on behalf of  
2 herself and all others similarly situated, complains and alleges as follows:

### 3 INTRODUCTION

4 1. Plaintiff brings this class and representative action against defendant  
5 TUESDAY MORNING, INC., a Texas corporation ("TUESDAY"), and DOES 1-  
6 100, inclusively (collectively, "Defendants") for alleged violations of the Fair  
7 Credit Reporting Act ("FCRA") and similar California laws.

8 2. Plaintiff alleges that Defendants routinely acquire consumer,  
9 investigative consumer and/or consumer credit reports (referred to collectively as  
10 "credit and background reports") to conduct background checks on Plaintiff and  
11 other prospective, current and former employees and use information from credit  
12 and background reports in connection with their hiring process without complying  
13 with the law. Plaintiff, individually and on behalf of all others similarly situated  
14 current, former, and prospective employees, seeks compensatory and punitive  
15 damages due to Defendants' systematic and willful violations of the FCRA, 15  
16 U.S.C. §§ 1681 *et seq.*, the California Investigative Consumer Reporting Agencies  
17 Act ("ICRAA") (Cal. Civ. Code § 1786, *et seq.*), and the California Consumer  
18 Credit Reporting Agencies Act ("CCRAA") (Cal. Civ. Code § 1785, *et seq.*).  
19

### 20 PARTIES

21 5. Plaintiff was employed by Defendant as an hourly, non-exempt  
22 employee working in the State of California from approximately December of  
23 2010 to July of 2013.

24 6. Defendant Tuesday Morning, Inc. ("TUESDAY") is a corporation  
25 authorized to do business in California.

26 7. Plaintiff is ignorant of the true names, capacities, relationships, and  
27 extents of participation in the conduct alleged herein, of the defendants sued as  
28 DOES 1-100, inclusive, but is informed and believes and thereon alleges that said



1 defendants are legally responsible for the wrongful conduct alleged herein and  
2 therefore sues these defendants by such fictitious names. Plaintiff will amend the  
3 Complaint to allege the true names and capacities of the DOE defendants when  
4 ascertained.

5 8. Plaintiff is informed and believes and thereon alleges that, at all  
6 relevant times herein, all Defendants were the agents, employees and/or servants,  
7 masters or employers of the remaining defendants, and in doing the things  
8 hereinafter alleged, were acting within the course and scope of such agency or  
9 employment, and with the approval and ratification of each of the other  
10 Defendants.

11 9. Plaintiff alleges that each and every one of the acts and omissions  
12 alleged herein were performed by, and/or attributable to, all Defendants, each  
13 acting as agents and/or employees, and/or under the direction and control of each  
14 of the other defendants, and that said acts and failures to act were within the  
15 course and scope of said agency, employment and/or direction and control.

#### 16 CLASS ALLEGATIONS

17 10. This action has been brought and may be maintained as a class action  
18 pursuant to FRCP §23 because there is a well-defined community of interest  
19 among the persons who comprise the readily ascertainable classes defined below  
20 and because Plaintiff is unaware of any difficulties likely to be encountered in  
21 managing this case as a class action.

22 11. **Class Definitions:** The classes are defined as follows:

23 A. **FCRA Class:** All of Defendants' current, former and  
24 prospective applicants for employment in the United States who applied for a job  
25 with Defendants at any time during the period beginning five years prior to the  
26 filing of this action and ending on the date that final judgment is entered in this  
27 action.  
28

1           B. **ICRAA Class:** All of Defendant's current, former, and  
2 prospective applicants for employment in California, at any time during the period  
3 beginning five years prior to the filing of this action and ending on the date that  
4 final judgment is entered into this action.

5           C. **CCRAA Class:** All of Defendant's current, former, and  
6 prospective applicants for employment in California, at any time during the period  
7 beginning seven years prior to the filing of this action and ending on the date that  
8 final judgment is entered in this action.

9  
10          12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff  
11 reserves the right to amend or modify the class definitions with greater specificity,  
12 by further division into subclasses and/or by limitation to particular issues.

13          13. **Numerosity:** The class members are so numerous that the individual  
14 joinder of each individual class member is impractical. While Plaintiff does not  
15 currently know the exact number of class members, Plaintiff is informed and  
16 believes that the actual number exceeds the minimum required for numerosity  
17 under California law.

18          14. **Commonality and Predominance:** Common questions of law and  
19 fact exist as to all class members and predominate over any questions which affect  
20 only individual class members. These questions include, but are not limited to:

21           A.     Wherein Defendants willfully failed to provide the class with  
22 stand-alone written disclosures before obtaining a credit or background report in  
23 compliance with the statutory mandates?

24           B.     Whether Defendants willfully failed to identify the name,  
25 address, telephone number, and/or website of the investigative consumer reporting  
26 agency conducting the investigation?

27           C.     Whether Defendants willfully failed to identify the source of  
28 the credit report to be performed?



1 D. Wherein Defendants willfully failed to comply with the FCRA,  
2 ICRAA and/or the CRAA?

3 15. **Typicality:** Plaintiff's claims are typical of the other class members'  
4 claims. Plaintiff is informed and believes and thereon alleges that Defendants have  
5 a policy, practice or a lack of a policy which resulted in Defendants failing to  
6 comply with the FCRA, ICRAA, and CCRAA as alleged herein.

7 16. **Adequacy of Class Representative:** Plaintiff is an adequate class  
8 representative in that he has no interests that are adverse to, or otherwise in  
9 conflict with, the interests of absent class members. Plaintiff is dedicated to  
10 vigorously prosecuting this action on behalf of class members. Plaintiff will fairly  
11 and adequately represent and protect the interests of class members.

12 17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class  
13 counsel in that they have no known conflicts of interest with Plaintiff or absent  
14 class members, are experienced in class action litigation and are dedicated to  
15 vigorously prosecuting this action on behalf of Plaintiff and absent class members.

16 18. **Superiority:** A class action is vastly superior to other available  
17 means for fair and efficient adjudication of class members' claims and would be  
18 beneficial to the parties and the Court. Class action treatment will allow a number  
19 of similarly situated persons to simultaneously and efficiently prosecute their  
20 common claims in a single forum without the unnecessary duplication of effort  
21 and expense that numerous individual actions would entail. In addition, the  
22 monetary amounts due to many individual class members are likely to be  
23 relatively small and would thus make it difficult, if not impossible, for individual  
24 class members to both seek and obtain relief. Moreover, a class action will serve  
25 an important public interest by permitting class members to effectively pursue the  
26 recovery of monies owed to them. Further, a class action will prevent the potential  
27 for inconsistent or contradictory judgments inherent in individual litigation.  
28

**FIRST CAUSE OF ACTION**

**FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE  
FCRA**

**(15 U.S.C. §§ 1681b(b)(2)(A))**

**(By Plaintiff and the FCRA Class against all Defendants)**

19. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20. Defendants are “persons” as defined by Section 1681a(b) of the FCRA.

21. Plaintiff and class members are “consumers” within the meaning Section 1681a(c) of the FCRA, because they are “individuals.”

22. Section 1681a(d)(1) of the FCRA defines “consumer report” as any oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility” for employment purposes.

Thus a credit and background report qualifies as a consumer report.

23. Section 1681a(e) of the FCRA defines “investigative consumer report” as:

a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with whom he is acquainted or who may have knowledge concerning any such items of information.

Thus a credit and background report qualifies as an investigative consumer report.

24. Section 1681b(b) of the FCRA provides, in relevant part:



1 Conditions for furnishing and using consumer reports for  
2 employment purposes

3 (2) Disclosure to consumer

4 (A) In general

5 Except as provided in subparagraph (B), a person may not  
6 procure a consumer report, or cause a consumer report to be  
7 procured, for employment purposes with respect to any  
8 consumer, unless—

- 9 i. **a clear and conspicuous** disclosure has been made in  
10 writing to the consumer at any time before the report is  
11 procured or caused to be procured, in a document that  
12 **consists solely of the disclosure**, that a consumer report  
13 may be obtained for employment purposes; and
- 14 ii. the consumer has authorized in writing (which  
15 authorization may be made on the document referred to  
16 in clause (i)) the procurement of the report by that  
17 person. (Emphasis Added).

18 25. As described above, Plaintiff alleges, on information and belief, that  
19 in evaluating her and other class members for employment, Defendants procured  
20 or caused to be prepared credit and background reports (i.e., a consumer report  
21 and/or investigative consumer report, as defined by 15 U.S.C. § 1681a(d)(1)(B)  
22 and 15 U.S.C. § 1681a(e)).

23 26. When Plaintiff applied for employment with Defendants, Defendants  
24 required her to fill out and sign a Document entitled “STORE EMPLOYEE  
25 HANDBOOK” consisting of 34 pages (“Authorization”).

26 27. In pertinent part the half-page Authorization states:

27 “ Background checks are an essential part of the hiring and promotion  
28 process. Background checks are a useful tool in hiring and promoting the  
most qualified people and protecting Company’s assets. Conducting  
background checks is a mandatory process. The background check is

1 completed to seek information that will provide insight into a  
2 candidate/employee's general character and sustainability for a particular  
3 position and to identify inaccurate or incomplete information that may  
4 disqualify a candidate from employment or promotion. The types of  
5 information that may be obtained through background checks may include  
6 but not limited to:

- 7 - Convictions of a misdemeanor and/or felony crime involving  
8 dishonesty, breach of trust, controlled substance, sexual misconduct,  
9 abuse, or violence.
- 10 - work, school, and personal history
- 11 - general consumer reporting information.

12 Tuesday Morning, Inc. complies with all applicable State and Federal Law  
13 with regard to background checks and consumer reporting.”

14 28. Because the purported disclosures are embedded with extraneous  
15 information, and are not clear and unambiguous disclosures in stand-alone  
16 documents, they do not meet the requirements under the law.

17 29. Under the FCRA, it is unlawful to procure or caused to be procured,  
18 a consumer report or investigative consumer report for employment purposes  
19 unless the disclosure is made in a document that consists solely of the disclosure  
20 and the consumer has authorized, in writing, the procurement of the report. 15  
21 U.S.C. § 1681b(b)(2)(A)(i)-(ii). The inclusion of other extraneous information,  
22 therefore, violates § 1681b(b)(2)(A) of the FCRA.

23 30. Although the disclosure and the authorization may be combined in a  
24 single document, the Federal Trade Commission (“FTC”) has warned that the  
25 form should not include any extraneous information or be part of another  
26 document. For example, in response to an inquiry as to whether the disclosure  
27 may be set forth within an application for employment or whether it must be  
28 included in a separate document, the FTC stated:

The disclosure may not be part of an employment application because  
the language [of 15 U.S.C. § 1681b(b)(2)(A) is] intended to ensure



1 that it appears conspicuously in a document not encumbered by any  
2 other information. The reason for requiring that the disclosure be in a  
3 stand-alone document is to prevent consumers from being distracted  
4 by other information side-by-side within the disclosure.

5 31. By including other extraneous information, Defendants willfully  
6 disregarded the FTC's regulatory guidance and violated Section 1681b(b)(2)(A)  
7 of the FCRA. Additionally, the inclusion of the extraneous provisions causes the  
8 disclosure to fail to be "clear and conspicuous" and "clear[] and accurate[]," and  
9 thus violates §§ 1681b(b)(2)(A) and 1681d(a).

10 32. Defendants' conduct in violation of Section 1681b(b)(2)(A) of the  
11 FCRA was and is willful. Defendants acted in deliberate or reckless disregard of  
12 their obligations and the rights of applicants and employees, including Plaintiff  
13 and class members. Defendants' willful conduct is reflected by, among other  
14 things, the following facts:

15 (a) Defendants are a large corporation with access to legal advice;

16 (b) Defendants required a purported authorization to perform  
17 credit and background checks in the process of employing the class members  
18 which, although defective, evidences Defendants' awareness of and willful failure  
19 to follow the governing laws concerning such authorizations;

20 (c) The plain language of the statute unambiguously indicates that  
21 inclusion of other extraneous information in a disclosure form violates the  
22 disclosure and authorization requirements; and

23 (d) The FTC's express statements, pre-dating Defendants'  
24 conduct, which state that it is a violation of Section 1681b(b)(2)(A) of the FCRA  
25 to include a liability waiver in the FCRA disclosure form.

26 33. Based upon the facts likely to have evidentiary support after a  
27 reasonable opportunity for further investigation and discovery, Plaintiff alleges  
28 that Defendants have a policy and practice of procuring investigative consumer

1 reports or causing investigative consumer reports to be procured for applicants  
2 and employees without informing such applicants of their right to request a  
3 summary of their rights under the FCRA at the same time as the disclosure  
4 explaining that an investigative consumer report may be made. Pursuant to that  
5 policy and practice, Defendants procured investigative consumer reports or caused  
6 investigative consumer reports to be procured for Plaintiff and class members, as  
7 described above, without informing class members of their rights to request a  
8 written summary of their rights under the FCRA.  
9

10 34. Accordingly, Defendants willfully violated and continue to violate  
11 the FCRA including, but not limited to, §§ 1681b(b)(2)(A) and 1681d(a).  
12 Defendants' willful conduct is reflected by, among other things, the facts set forth  
13 above.

14 35. As a result of Defendants' illegal procurement of credit and  
15 background reports by way of their inadequate disclosures, as set forth above,  
16 Plaintiff and class members have been injured including, but not limited to, having  
17 their privacy and statutory rights invaded in violation of the FCRA.

18 36. Plaintiff, on behalf of herself and all class members, seeks all  
19 available remedies pursuant to 15 U.S.C. § 1681n, including statutory damages  
20 and/or actual damages, punitive damages, injunctive and equitable relief and  
21 attorneys' fees and costs.

22 37. In the alternative to Plaintiff's allegation that these violations were  
23 willful, Plaintiff alleges that the violations were negligent and seeks the  
24 appropriate remedy, if any, under 15 U.S.C. § 1681o, including actual damages  
25 and attorneys' fees and costs.  
26

27 //

28 //



**SECOND CAUSE OF ACTION**

**FAILURE TO GIVE PROPER SUMMARY OF RIGHTS IN VIOLATION  
OF FCRA**

**(15 U.S.C. § 1681d(a)(1) and 1681g(c))**

**(By Plaintiff and the FCRA Class against all Defendants)**

38. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

39. Section 1681d(a)(1) provides:

Disclosure of fact of preparation

A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is *clearly and accurately disclosed* to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure;

(2) is *made in a writing mailed, or otherwise delivered*, to the consumer, not later than three days after the date on which the report was first requested, and

(3) *includes a statement informing the consumer of his right to request the additional disclosures* provided for under subsection (b) of this section *and the written summary of the rights of the consumer prepared pursuant to section 1681g(c)* of this title; (Emphasis Added.)

(4) Subsection (b) of Section 1681d(a)(1) provides:

Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1) of this section (a)(1) of this section, make a *complete and accurate disclosure of the nature and scope of the investigation requested*; (Emphasis Added). This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request

for such disclosure was received from the consumer or such report was first requested, whichever is the later.

40. Defendant did not comply with Section 1681d(a)(1).

41. Section 1681g(c) further provides summary of rights to obtain and dispute information in consumer reports and to obtain credit scores as:

(A) Commission summary of rights required

The Commission shall prepare a *model summary of the rights* of consumers under this subchapter.

(B) Content of summary

The summary of rights prepared under subparagraph (A) shall include a description of—

- (1) the *right of a consumer to obtain a copy of a consumer report* under subsection (a) of this section from each consumer reporting agency;
- (2) the *frequency and circumstances under which a consumer is entitled to receive a consumer report without charge* under section 1681j of this title;
- (3) the right of a consumer to *dispute information* in the file of the consumer under section 1681i of this title;
- (4) *the right of a consumer to obtain a credit score* from a consumer reporting agency, and a description of how to obtain a credit score;
- (5) the *method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge*, as provided in the regulations of the Bureau prescribed under section 211(c) of the Fair and Accurate Credit Transactions Act of 2003; and
- (6) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 1681a(w) of this title, as provided in the regulations of the Bureau prescribed under section 1681j(a)(1)(C) of this title; (Emphasis Added).

42. Defendant did not comply with 1681g(c).

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**THIRD CAUSE OF ACTION**

**FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF ICRAA**

**(Cal. Civ. Code § 1786 *et seq.*)**

**(By Plaintiff and the ICRAA Class against all Defendants)**

43. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

44. Defendants are “persons” as defined by Section 1786.2(a) of the Investigative Consumer Reporting Agencies Act (“ICRAA”).

45. Plaintiff and **ICRAA Class** members are “consumers” within the meaning Section 1786.2(b) of the ICRAA, because they are “individuals.”

46. Section 1786.2(c) of the ICRAA defines “investigative consumer report” as:

a consumer report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through any means.

47. Thus a background checks qualifies as an investigative consumer report under the ICRAA

48. Section 1786.16(a)(2) of the ICRAA provides, in relevant part:

If, at any time, an investigative consumer report is sought for employment purposes...the person seeking the investigative consumer report may procure the report, or cause the report to be made, only if all of the following apply:

(B) The person procuring or causing the report to be made provides a ***clear and conspicuous*** disclosure in writing to the consumer at any time before the report is procured or caused to be made ***in a document that consists solely of the disclosure***, that:

(i) An investigative consumer report may be obtained.

(ii) The permissible purpose of the report is identified.

(iii) The disclosure may include information on the consumer's character, general reputation, personal characteristics, and mode of living.

(iv) Identifies the ***name, address, and telephone number of the investigative consumer reporting agency*** conducting the investigation.

(v) Notifies the consumer in writing of the nature and scope of the investigation requested, including a `` of the provisions of Section 1786.22.

(vi) ***Notifies the consumer of the Internet Web site address of the investigative consumer reporting agency*** identified in clause (iv), or, ***if the agency has no Internet Web site address, the telephone number of the agency***, where the consumer may find information about the investigative reporting agency's privacy practices, including whether the consumer's personal information will be sent outside the United States or its territories and information that complies with subdivision (d) of Section 1786.20. This clause shall become operative on January 1, 2012.

(C) The consumer has authorized in writing the procurement of the report. (Emphasis added.)

49. As described above, Plaintiff alleges that in evaluating her and other class members for employment, Defendants procured or caused to be prepared investigative consumer report (e.g. background checks), as defined by Cal. Civ. Code § 1786.2(c).

50. When Plaintiff applied for employment with Defendants, Defendants required her to fill out and sign a Document entitled "STORE EMPLOYEE HANDBOOK" consisting of 34 pages ("Authorization").

51. In pertinent part the half-page Authorization states:

"Background checks are an essential part of the hiring and promotion process. Background checks are a useful tool in hiring and promoting the most qualified people and protecting Company's assets. Conducting background checks is a mandatory process. The background check is completed to seek information that will provide insight into a candidate/employee's general character and sustainability for a particular



1 position and to identify inaccurate or incomplete information that may  
2 disqualify a candidate from employment or promotion. The types of  
3 information that may be obtained through background checks may include  
but not limited to:

- 4 - Convictions of a misdemeanor and/or felony crime involving  
5 dishonesty, breach of trust, controlled substance, sexual misconduct,  
6 abuse, or violence.
- 7 - work, school, and personal history
- 8 - general consumer reporting information.

9 Tuesday Morning, Inc. complies with all applicable State and Federal Law  
with regard to background checks and consumer reporting.”

10 Because the purported disclosures are embedded with extraneous  
11 information, and are not clear and unambiguous disclosures in stand-alone  
12 documents, they do not meet the requirements under the law.

13  
14 52. Under the ICRAA, it is unlawful to procure or caused to be procured,  
15 a consumer report or investigative consumer report for employment purposes  
16 unless the disclosure is made in a document that consists solely of the disclosure  
17 and the consumer has authorized, in writing, the procurement of the report. Cal.  
18 Civ. Code § 1786.16(a)(2)(B)-(C). The inclusion of other extraneous information,  
19 therefore, violates § 1786.16(a)(2)(B) of the ICRAA.

20 53. The plain language of the statute clearly indicates that the inclusion  
21 of extraneous information in a disclosure form violates the disclosure and  
22 authorization requirements of the ICRAA, because such a form would not consist  
23 “solely” of the disclosure.

24 54. The inclusion of the extraneous provisions causes the disclosure to  
25 fail to be “clear and conspicuous” and thus violates § 1786.16(a)(2)(B).

26 55. In addition, pursuant to § 1786.16(a)(2)(B)(iv) and (vi) of the  
27 ICRAA, the disclosure form must notify the consumer of the name, address,  
28 telephone number, and/or website address of the investigative consumer reporting

1 agency conducting the investigation. Defendants failed to identify in the  
2 disclosure form the name, address, phone number, or website of the investigative  
3 consumer reporting agency conducting the investigation, and thus violated §  
4 1786.16(a)(2)(B)(iv) and (vi) of the ICRAA.

5 56. Based upon facts that are likely to have evidentiary support after a  
6 reasonable opportunity for investigation and discovery, Plaintiff alleges that  
7 Defendants have a policy and practice of failing to provide adequate written  
8 disclosures to applicants and employees, before procuring background checks or  
9 causing background checks to be procured, as described above. Pursuant to that  
10 policy and practice, Defendants procured background checks or caused  
11 background checks to be procured for Plaintiff and class members without first  
12 providing a written disclosure in compliance with § 1786.16(a)(2)(B) of the  
13 ICRAA, as described above.  
14

15 57. Defendants' conduct in violation of § 1786.16(a)(2)(B) of the  
16 ICRAA was and is willful and/or grossly negligent. Defendants acted in deliberate  
17 or reckless disregard of their obligations and the rights of applicants and  
18 employees, including Plaintiff and class members. Defendants' willful conduct is  
19 reflected by, among other things, the following facts:

20 (e) Defendants are large corporations with access to legal advice;

21 (f) Defendants required a purported authorization to perform  
22 credit and background checks in the process of employing the class members  
23 which, although defective, evidences Defendants' awareness of and willful failure  
24 to follow the governing laws concerning such authorizations; and  
25

26 (g) The plain language of the statute unambiguously indicates that  
27 inclusion of other extraneous information in a disclosure form violates the  
28 disclosure and authorization requirements, and that the disclosure form must  
contain the name, address, phone number, and/or website address of the



1 investigative consumer reporting agency conducting the investigation.

2 58. As a result of Defendants' illegal procurement of background reports  
3 by way of their inadequate disclosures, as set forth above, Plaintiff and class  
4 members have been injured including, but not limited to, having their privacy and  
5 statutory rights invaded in violation of the ICRAA.

6 59. Plaintiff, on behalf of herself and all class members, seeks all  
7 available remedies pursuant to Cal. Civ. Code § 1786.50, including statutory  
8 damages and/or actual damages, punitive damages, and attorneys' fees and costs.

9 60. In the alternative to Plaintiff's allegation that these violations  
10 were willful or grossly negligent, Plaintiff alleges that the violations were  
11 negligent and seeks the appropriate remedy, if any, under Cal. Civ. Code §  
12 1786.50(a), including actual damages and attorneys' fees and costs.

#### 13 **FOURTH CAUSE OF ACTION**

#### 14 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF** 15 **CCRAA**

16 **(Cal. Civ. Code § 1785 et seq.)**

17 **(By Plaintiff and the CCRAA Class against all Defendants)**

18 61. Plaintiff incorporates all paragraphs of this Complaint as if fully  
19 alleged herein.

20 62. Defendants are "persons" as defined by Section 1785.3(j) of the  
21 Consumer Credit Reporting Agencies Act ("CCRAA").

22 63. Plaintiff and **CCRAA Class** members are "consumers" within the  
23 meaning Section 1785.3(b) of the CCRAA, because they are "natural individuals."

24 64. Section 1785.3(c) of the ICRAA defines "consumer credit report" as:

25 any written, oral, or other communication of any information by a  
26 consumer credit reporting agency bearing on a consumer's credit  
27 worthiness, credit standing, or credit capacity, which is used or is  
28 expected to be used, or collected in whole or in part, for the purpose

1 of serving as a factor in establishing the consumer's eligibility for:  
 2 ...(2) employment purposes...

3 65. Thus a credit report qualifies as a consumer credit report  
 4 under the CCRAA.

5 66. Section 1785.20.5(a) of the CCRAA provides, in relevant part:

6 Prior to requesting a consumer credit report for employment  
 7 purposes, the user of the report shall provide written notice to the  
 8 person involved. The notice shall inform the person that a report will  
 9 be used, and ***shall identify the specific basis under subdivision (a) of***  
 10 ***Section 1024.5 of the Labor Code for use of the report. The notice***  
 11 ***shall also inform the person of the source of the report...***  
 (Emphasis added.)

12 67. As described above, Plaintiff alleges that in evaluating her and  
 13 other class members for employment, Defendants procured or caused to be  
 14 prepared consumer credit reports (e.g. credit reports), as defined by Cal. Civ.  
 15 Code § 1785.3(c).

16 68. When Plaintiff applied for employment with Defendants, Defendants  
 17 required her to fill out and sign a Document entitled “STORE EMPLOYEE  
 18 HANDBOOK” consisting of 34 pages (“Authorization”).

19 69. In pertinent part the half-page Authorization states:

20 “Background checks are an essential part of the hiring and promotion  
 21 process. Background checks are a useful tool in hiring and promoting the  
 22 most qualified people and protecting Company’s assets. Conducting  
 23 background checks is a mandatory process. The background check is  
 24 completed to seek information that will provide insight into a  
 25 candidate/employee’s general character and sustainability for a particular  
 26 position and to identify inaccurate or incomplete information that may  
 27 disqualify a candidate from employment or promotion. The types of  
 28 information that may be obtained through background checks may include  
 but not limited to:

- Convictions of a misdemeanor and/or felony crime involving dishonesty, breach of trust, controlled substance, sexual misconduct, abuse, or violence.



- work, school, and personal history
- general consumer reporting information.

Tuesday Morning, Inc. complies with all applicable State and Federal Law with regard to background checks and consumer reporting.”

70. The Authorization does not identify the specific basis under subdivision (a) of Section 1024.5 of the Labor Code for use of the credit report. Nor does the Authorization identify the source of any credit report. Both of these omissions Authorization clearly violate § 1785.20.5(a) of the CCRAA, as delineated above.

71. Based upon facts that are likely to have evidentiary support after a reasonable opportunity for investigation and discovery, Plaintiff alleges that Defendants have a policy and practice of failing to provide adequate written disclosures to applicants and employees, before procuring credit reports or causing credit reports to be procured, as described above. Pursuant to that policy and practice, Defendants procured credit reports or caused credit reports to be procured for Plaintiff and class members without first providing a written notice in compliance with § 1785.20.5(a) of the CCRAA, as described above.

72. Defendants’ conduct in violation of § 1785.20.5(a) of the CCRAA was and is willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their obligations and the rights of applicants and employees, including Plaintiff and class members. Defendants’ willful conduct is reflected by, among other things, the following facts:

- (h) Defendants are large corporations with access to legal advice;
- (i) Defendants required a purported authorization to perform credit checks in the process of employing the class members which, although defective, evidences Defendants’ awareness of and willful failure to follow the governing laws concerning such authorizations; and

1 (j) The plain language of the statute unambiguously indicates that  
2 failure to include the provisions identified above violates the CCRAA's notice  
3 requirements, and that the notice must identify the specific basis under subdivision  
4 (a) of Section 1024.5 of the Labor Code for use of the credit report and must  
5 identify the source of any credit report.

6 73. As a result of Defendants' illegal procurement of credit reports by  
7 way of their inadequate notice, as set forth above, Plaintiff and class members  
8 have been injured including, but not limited to, having their privacy and statutory  
9 rights invaded in violation of the CCRAA.

10 74. Plaintiff, on behalf of herself and all class members, seeks all  
11 available remedies pursuant to Cal. Civ. Code § 1785.31, including statutory  
12 damages and/or actual damages, punitive damages, injunctive relief, and  
13 attorneys' fees and costs.

14 75. In the alternative to Plaintiff's allegation that these violations  
15 were willful, Plaintiff alleges that the violations were negligent and seeks the  
16 appropriate remedy, if any, under Cal. Civ. Code § 1785.31(a)(1), including but  
17 not limited to actual damages and attorneys' fees and costs.

18  
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, on behalf of herself and all others similarly  
21 situated, prays for relief and judgment against Defendants as follows:

- 22 A. An order that the action be certified as a class action;  
23 B. An order that Plaintiff be appointed class representative;  
24 C. An order that counsel for Plaintiff be appointed class counsel;  
25 D. Statutory penalties;  
26 E. Civil penalties;  
27 F. Punitive damages;  
28 G. Injunctive relief;



1 H. Costs of suit;

2 I. Interest;

3 J. Reasonable attorneys' fees; and

4 K. Such other relief as the Court deems just and proper.

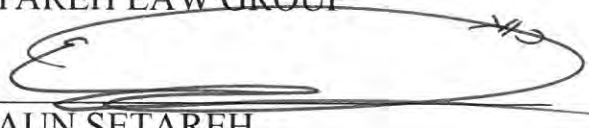
5 **DEMAND FOR JURY TRIAL**

6 Plaintiff, on behalf of herself and all others similarly situated, hereby  
7 demands a jury trial on all issues so triable.  
8

9  
10 Dated: July 13, 2015

Respectfully submitted,

11 SETAREH LAW GROUP

12  
13 By   
14 SHAUN SETAREH,  
15 Attorney for Plaintiff,  
16 CYNTHIA MCMAHON, on behalf of  
17 herself, and all others similarly situated  
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